IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1654 OF 1999.

Shri Manohar Lakman Waghmaer. ... Petitioner.

V/s.

Shri Vishnu Arjun Kamble. ... Respondent.

Ramesh Dube Patil i/b. M/s.Ajay Nissar & Co. for the petitioner.

V.G.Mujumdar for the respondent.

CORAM: V.C.DAGA, J.

DATED: 25th September 2006.

ORDER :

. When this matter was called out for final hearing on 22nd September, 2006, petition was partly heard and adjourned to today. That is how this petition has come for hearing on today's board.

2. Today when the matter is called out for hearing, nobody is present on behalf of the petitioner. Heard Mr.Mujumdar, learned counsel for the respondent. With the assistance of Mr.Mujumdar I went through the rival pleadings and evidence as also the findings recorded by both Courts below.

3. The respondent- plaintiff in the plaint, in para-4A, has pleaded that the defendant has acquired flat bearing No.29 on the ground floor of Anand Nagar, Kothrud. There appears to be general denial in the written statement in respect of the said averment made in the plaint. The plaintiff entered into witness box and stated on oath about the acquisition of flat by defendant- tenant admeasuring about 300 sq.ft. area in the name of his wife. There is, practically, no cross-examination on this aspect of the matter from the side of the petitioner/defenant- tenant The defendant- tenant in his cross-examination was required to admit acquisition of said flat in the name of his wife. However, he tried to furnish explanation that the said flat has been purchased by his brother in the name of his wife, since there was matrimonial dispute between his brother and his wife. That is how it was sought to be canvassed that the said acquisition by the wife of the tenant cannot be used as ground for his eviction. The petitioner- tenant is having tenancy agreement in his own right. Mr.Mujumdar, learned counsel for the respondent brought to my notice plaint pleading with respect to bonafide need; wherein the plaintiff has stated that he has about 9 members in his family and he is having a room admeasuring 10x10 sq.ft. which cannot

accommodate 9 members of the family. The plaintiff has also pleaded that no hardship would be caused to the defendant, if the eviction decree is passed against the defendant, in view of availability of alternate premises with defendant-tenant.

4. After hearing the parties, both Courts below found favour with the submissions advanced on behalf of the plaintiff- the original landlord. Both the Courts below have concurrently held that the bonafide need has been established by the plaintiff and that no hardship would be caused to the defendant, if the eviction decree is passed against him. The Courts below have, concurrently, held that the petitioner has acquired suitable alternate accommodation. In this view of the matter, eviction decree came to be passed by the trial Court and confirmed by the lower appellate Court.

5. The learned counsel for the respondent has placed heavy reliance on the judgment of of the Apex Court in the case of **B.R.Mehta v. Smt.Atma Devi**, AIR 1987 SC 2220 in support of the

contention canvassed by him that if a wife or husband acquires a property and the other spouse is the tenant, then such acquisition cannot be a ground for eviction. The said judgment on facts is discussed and distinguished by the learned single Judge of this Court in the case of **Mrs.Manorama Gopal Landge v. Somnath Dagdue Rane**, (2005) 107 Bom.L.R. 116; wherein learned single Judge has observed in para-10 of the judgment that the Apex Court in the case of **B.R.Mehta** (supra) dealt with a case, where admittedly, a wife had acquired a flat in pursuant to the relevant service condition as such it was difficult to say that the husband has a right to occupy the said flat, specially, when matrimonial relationship was already strained. In the aforesaid judgment of **Mrs.Manorama Landge** (supra), this Court held that acquisition of premises by either of the members of the family can be a ground for the landlord to resort to the Bombay Rent Act for eviction.

6. Sufficiency of evidence cannot be gone into in writ jurisdiction of this Court since this Court is not exercising appellate jurisdiction over rent Courts. This Court not being a Court of

appeal, is not expected to reappreciate the evidence in view of the judgment of the Apex Court in the case of **Laxmikant Revchand Bhojwani v. Pratapsingh Mohansingh Pardeshi (1995) 6 SCC 576,** (para 9), wherein following observations were made:

> " Before parting with this judgment, we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

7. Bearing in mind the above observations of the Apex Court and considering the concurrent findings of fact recorded by the Courts below, it is very difficult to reach to the conclusion that the impugned order is a perverse order. Cogent reasons are given by the lower appellate Court while confirming the findings of fact recorded by

the trial Court on each and every issue raised in the appeal. The lower appellate Court appreciated oral evidence and recorded findings of fact and affirmed the findings of facts recorded by the trial Court. No case is made out either in the petition or during the course of hearing to demonstrate that any piece of evidence was not taken into account by the Courts below or that any piece of evidence was misconstrued by the lower appellate Court.

8. Following the said rule and considering the concurrent findings recorded by the Court below, the petition is without any substance and the same is liable to be dismissed.

. In the result, petition is dismissed. Rule stands discharged with no order as to costs.

(V.C.DAGA, J.)